



IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1979

No. 79-468

JOHN R. WINEGARD, Petitioner,
vs.

SALLY ANN GILVIN,
a/k/a Sally Ann
Winegard, Respondent,

BRIEF IN OPPOSITION TO PETITION
FOR CERTIORARI

Edward N. Wehr
Wehr & DeLange
Attorneys at Law
705 Kahl Bldg.
Davenport, Iowa 52801

OF COUNSEL:
Schalk Law Offices
910 Kahl Bldg.
Davenport, Iowa
52801

ATTORNEYS for
RESPONDENT

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1979

No. 79-468

JOHN R. WINEGARD,

Petitioner,

vs.

SALLY ANN GILVIN,

a/k/a Sally Ann
Winegard,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR
CERTIORARI
TO THE SUPREME COURT OF
IOWA

STATEMENT OF THE CASE

This case arises from a Petition for
Dissolution of Marriage filed by Sally Ann
Winegard in the District Court of the State
of Iowa, wherein it was alleged that the

parties had established a marriage by common law.

Thereafter, commenced a protracted and circus-like litigation consuming greater than six years, including a bifurcated trial, two petitions for interlocutory appeal, two appeals to the Iowa Supreme Court and further litigation in the Federal District Court and Eighth Circuit Court of Appeals.

The State trial court concluded that a common law marriage existed and awarded Respondent a financial award as lump sum allocation of property rights in lieu of alimony. Later, the Iowa Supreme Court reaffirmed the existence of a common law marriage and awarded a substantially greater lump sum allocation of property rights to Respondent.

At issue at trial and on appeal and presently before the Court is the theory or defense of Petitioner that Respondent's divorce from a prior spouse obtained in the State of Nevada was invalid and therefore the State of Iowa should not give Full Faith and Credit to said Decree, thereby barring Respondent from being

capable of entering into a marriage in the State of Iowa.

It was stipulated at the time of trial that Respondent's former spouse, Franklin Gilvin was alive and remarried and presently residing in the State of Ohio. Respondent's defense has been two-fold:

1. That Petitioner lacked standing as a third party to challenge the validity of the Nevada Decree.
2. Assuming standing; that he was nevertheless, estopped by virtue of his knowledge, participation, and financial participation in acquiring the Nevada Decree as is more fully discussed in the opinion of the Iowa Court (A.26,27,55)

After the decision reached by the Supreme Court of the State of Iowa, petitioner has sought a Writ of Certiorari from this Court arguing that Iowa was constitutionally barred from enforcing the Full Faith and Credit clause of the United States Constitution.

ARGUMENT

Petitioner, John R. Winegard, in his request for a Writ of Certiorari, totally fails to comprehend both the Full Faith and Credit clause of the United States Constitution and more importantly fails to analyze the decision of the Iowa Supreme Court.

In its 1979 decision, IN RE MARRIAGE OF WINEGARD, 278 N.W. 2d 505, (A.44); The court recognized that Respondent's second Nevada Divorce allowed, but not mandated, the jurisdictional probe of the Iowa courts regarding the validity of the Nevada Divorce under the Full Faith and Credit clause. It is clear that a non-appearing spouse would have grounds to question in Iowa the jurisdiction of the Nevada Court, however; the issue presently before this Court is the status of a third party seeking to attack the validity of an ex-parte divorce. It is this issue of standing that is clearly addressed by the Iowa Supreme Court that should be the crux of this petition not the equity and estoppel theories advanced by Petitioner. It is only after

the State interest analysis regarding third parties to a foreign divorce decree, does the Iowa Supreme Court discuss the issue of estoppel. The Iowa Court in effect states that after an examination of the State's interest criteria, that the State of Iowa should follow the mandates of the Full Faith and Credit clause of the United States Constitution. It was only after making that initial decision, and further after having decided that jurisdictional issue, was the estoppel issue discussed..

The only issue before this Court is the treatment by the Iowa Supreme Court of Iowa's discussion of the State interest as it relates to the Full Faith and Credit clause and not the Court's discussion of estoppel as pronounced by the Petitioner.

Petitioner's request for Writ at pg.6 is based upon his allegation that the Supreme Court of Iowa held estoppel and laches precluded Petitioner from collaterally attacking the Nevada Decree, when in fact the Iowa Supreme Court held following a State's interest analysis that Petitioner lacked stand-to challenge the Nevada Decree in the Iowa courts and after this

determination discussed estoppel.

The Iowa Supreme Court in its decision allowed the Petitioner to attack the alleged validity of an ex-parte divorce decree by virtue that his right to do so was unanswered by the SHEARER, MUELENBERGER and WILLIAMS II decisions regarding the capacity of third parties to so attack the validity of ex-parte divorces. The Iowa Court after analyzing this issue rejected petitioner's claim. Based upon his inability to present such a claim under both Nevada and Iowa law, thirdly by weighing the interest of the State of Iowa by the above referred to State's interest analysis, see pg. 53 Petitioner's Brief-Appendix, where the Iowa Court states "While it is clear that the Full Faith and Credit clause as interpreted by the United States Supreme Court does not mandate Iowa acceptance of the Nevada Divorce Decree, it would appear that Iowa is not precluded from giving the Nevada judgment Full Faith and Credit when to do so would not be against the

interest of the State regarding domestic relations."

The scenario of Petitioner's defense theory to avoid the consequences of a subsequent marriage is intriguing if not ludicrous. In February of 1971 he becomes engaged to Respondent and the following April flies with her to the City of Las Vegas, Nevada, for the purposes of entering into a ceremonious marriage. While there he changes his mind and returns with her to the State of Iowa holding her out to the community as his wife and under Iowa law establishing a marriage by common law. Earlier he had convinced Respondent to divorce her then husband, Gilvin, and subsequently financed her excursion again to Las Vegas, Nevada for the purpose of securing for her a divorce. At the conclusion of the proceedings in Nevada he was reunited with Respondent and returned home to the State of Iowa with her. After accepting the benefits of this relationship and filing a married United States Income Tax Return, Petitioner

now some eight and one-half years later, challenges Respondent's capacity to enter into the existing marriage by virtue of alleged jurisdictional defects in her previous divorce proceedings of which he was not only aware of and promoted, but totally financed. To allow Petitioner at this juncture to examine any irregularities in a divorce proceeding of which he had no legitimate interest is to invite a plethora of litigation in every State in the United States.

In conclusion, the Full Faith and Credit clause requires states to accept a foreign judgment subject to a jurisdictional analysis which does not rise to constitutional proportions. Further, where the challenging party was not an original participant, the state court must weigh its interests in regulating domestic relations. It must preserve the integrity of the Full Faith and Credit clause through a jurisdictional analysis, not mandatorily withhold it under the claim of a stranger to it.

CONCLUSION

For the reasons set forth above, the Respondent herein submits that a Writ of Certiorari should not be granted in this case.

Respectfully submitted,

Edward N. Wehr
Edward N. Wehr
Wehr & DeLange
Attorneys at Law
705 Kahl Building
Davenport, IA. 52801

OF COUNSEL:

Schalk Law Offices
910 Kahl Building
Davenport, IA 52801

Attorneys for Respondent